IN THE UNITED STATES PATENT & TRADEMARK OFFICE

Appellant:	Kuure et al.	Examiner:	Perez, J.
Serial No.:	10/809,165	Group Art Unit:	2617
Filing Date:	March 25, 2004	Docket No.:	KOLS.101PA
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Title:	COMMUNICATION METHOD, MOBILE TERMINAL, AND COMPUTER PROGRAM		

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this paper is being electronically transmitted by EFS-WEB to the United States Patent and Trademark Office on November 5, 2010.

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APPEAL BRIEF

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Sir:

This Appeal Brief is submitted pursuant to 37 C.F.R. § 41.37 for the above-referenced patent application in response to the Notice of Appeal filed on September 7, 2010.

Please charge deposit account 50-3581 (KOLS.101PA) in the amount of $540.00 for filing this brief in support of an appeal as set forth in 37 C.F.R. § 41.20(b)(2). If necessary, authority is given to charge/credit deposit account 50-3581 (KOLS.101PA) additional fees/overages in support of this filing.

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I. REAL PARTY IN INTEREST

The real party in interest is the assignee, Nokia Corporation.

II. RELATED APPEALS AND INTERFERENCES

Appellant is unaware of any related appeals, interferences, or judicial proceedings that would have a bearing on the Board's decision in the instant appeal.

III. STATUS OF CLAIMS

Claims 1, 3-9, 11-17, 19-27, and 29 are pending, and claims 2, 10, 18, and 28 have been canceled. Claims 1, 3-9, 11-17, 19-27, and 29 have been finally rejected by the Examiner's action dated June 9, 2010 (hereinafter "final Office action"), from which Appellant appeals.

A copy of claims 1, 3-9, 11-17, 19-27, and 29, which are the subject of this appeal, may be found in the Claims Appendix (section VIII) at pages 14-23.

IV. STATUS OF AMENDMENTS

No amendments were presented subsequent to the final rejection dated June 9, 2010.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The claimed invention provides for automatically interrupting data streaming when a communication connection is accepted. As a result, the end user is not required to take separate actions to accept the communication connection and interrupt the data streaming, which simplifies the shift from using the data streaming service to using the communication connection.

One embodiment of the present invention is directed to a method. *See, e.g.*, claim 1; Figs. 4 and 7B; and the corresponding discussions at page 15, line 29 – page 16, line 7; and page 17, lines 24-36. The method includes performing data streaming communication with a server connected to a network infrastructure providing a radio interface connection (*e.g.*, 402), wherein the server is external to the network infrastructure and receiving a communication connection request message from the network infrastructure (*e.g.*, 404). Reception of the communication connection request is indicated on a user interface (*e.g.*, 406), and a first mode change command is received via the user interface (*e.g.*, 408, 702B). Next, a transmission suspension message is generated on the basis of the first mode change command (*e.g.*, 410, 704B), the transmission suspension message informing the server to suspend transmission of the data stream. The method further includes transmitting the transmission suspension message to the server over the radio interface provided by the network infrastructure (*e.g.*, 706B) and accepting from the network infrastructure the communication connection on the basis of the first mode change command (*e.g.*, 412, 708B).

Another embodiment of the present invention is directed to a mobile terminal. *See, e.g.*, claim 9; Fig. 2; and the corresponding discussion at page 6, line 19 – page 14, line 16. The mobile terminal (*e.g.*, 200) includes a communicating unit (*e.g.*, 202) for performing data streaming communication between the mobile terminal and a server (*e.g.*, 218) connected to a network infrastructure (*e.g.*, 216) providing a radio interface connection between the mobile terminal and the server, wherein the server is external to the network infrastructure. The mobile terminal also includes a message receiving unit (*e.g.*, 204) for receiving a communication connection request message (*e.g.*, 222) from the network infrastructure; an indicating device (*e.g.*, 206) connected to the message receiving unit, for indicating reception of the communication connection request message to a user of the

mobile terminal; and a command receiving device (*e.g.*, 208) for receiving a first mode change command (*e.g.*, 224) generated by the user. A data streaming control unit (*e.g.*, 210) operationally connected to the command receiving device and the communicating unit is included for requesting for suspension of the data streaming communication from the server on the basis of the first mode change command, wherein the data streaming control unit is configured to generate a transmission suspension message (*e.g.*, 228) on the basis of the first mode change command, the transmission suspension message informing the server to suspend the transmission of the data stream and is configured to transmit the transmission suspension message to the server over the radio interface provided by the network infrastructure. The mobile terminal further includes a communication connection control unit (*e.g.*, 212) operationally connected to the command receiving device and the data streaming control unit, for accepting from the network infrastructure the communication connection on the basis of the first mode change command.

Another embodiment of the present invention is directed to a computer program including computer program code stored on a computer readable medium. *See, e.g.*, claim 17; Figs. 4 and 7B; and the corresponding discussions at page 15, line 29 – page 16, line 7; page 17, lines 24-36; and page 18, lines 7-14. The computer program code is configured to, with a processor (*e.g.*, page 12, lines 8-13), cause an apparatus at least to perform data streaming communication between the apparatus and a server connected to a network infrastructure providing a radio interface connection (*e.g.*, 402), wherein the server is external to the network infrastructure and to receive a communication connection request message from the network infrastructure (*e.g.*, 404). The apparatus is also caused to indicate reception of the communication connection request on a user interface (*e.g.*, 406) and receive a first mode change command via the user interface (*e.g.*, 408, 702B). A transmission suspension message is generated on the basis of the first mode change command (*e.g.*, 410, 704B), the transmission suspension message informing the server to suspend transmission of the data stream. The apparatus is further caused to transmit the transmission suspension message to the server over the radio interface provided by the network infrastructure (*e.g.*, 706B) and accept from the network infrastructure the communication connection on the basis of the first mode change command (*e.g.*, 412, 708B).

Another embodiment of the present invention is directed to an apparatus. *See, e.g.*, claim 25; Figs. 3, 4, and 7B; and the corresponding discussions at page 14, line 17 – page 15, line 26; page 15, line 29 – page 16, line 7; page 17, lines 24-36; and page 18, lines 7-14. The apparatus (*e.g.*, 300) comprises at least one radio modem (*e.g.*, 302), a user interface (*e.g.*, 314), at least one processor (*e.g.*, 310), and at least one memory (*e.g.*, 312) including computer program code. The at least one memory and the computer program code are configured to, with the at least one processor, the at least one radio modem and the user interface, cause the apparatus at least to perform data streaming communication between the apparatus and a server connected to a network infrastructure providing a radio interface connection (*e.g.*, 402), wherein the server is external to the network infrastructure. The apparatus also receives a communication connection request message from the network infrastructure (*e.g.*, 404), indicates reception of the communication connection request message on the user interface (*e.g.*, 406), and receives a first mode change command via the user interface (*e.g.*, 408, 702B). On the basis of the first mode change command, the transmission suspension message (*e.g.*, 410, 704B) informs the server to suspend transmission of the data stream. The apparatus further transmits the transmission suspension message to the server over the radio interface provided by the network infrastructure (*e.g.*, 706B) and accepts from the network infrastructure the communication connection on the basis of the first mode change command (*e.g.*, 412, 708B).

As required by 37 C.F.R. § 41.37(c)(1)(v), a concise explanation of the subject matter defined in each of the independent claims involved in the appeal is provided herein. Appellant notes that representative subject matter is identified for each of these claims; however, the abundance of supporting subject matter in the application prohibits identifying all textual and diagrammatic references to each claimed recitation. Appellant thus submits that other application subject matter, which supports the claims but is not specifically identified above, may be found elsewhere in the application. Appellant further notes that this summary does not provide an exhaustive or exclusive view of the present subject matter, and Appellant refers to the appended claims and their legal equivalents for a complete statement of the invention.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Claims 19-24 stand rejected under 35 U.S.C. § 112, second paragraph.

B. Claims 1, 3-9, 11-17, 19-27, and 29 stand rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 7,031,746 to Na *et al.* (hereinafter "Na") in view of U.S. Patent No. 5,982,774 to Foladare *et al.* (hereinafter "Foladare").

VII. ARGUMENT

A. The § 112, second paragraph, rejection of claims 19-24 is improper because explicit antecedent basis for the term "the apparatus" is provided in independent claim 17.

The final Office action, at page two, asserts that "[t]here is insufficient antecedent basis for this limitation ["the apparatus"] in the claim [claims 19-24]". Each of claims 19-24 depends upon independent claim 17, which recites, "A computer program including computer program code stored on a computer readable medium, the computer program code configured to, with a processor, cause an apparatus at least to:" and "perform data streaming communication between the apparatus and a server" (emphasis added). Thus, claim 17 provides antecedent basis for the term "the apparatus" in claims that depend therefrom. Since proper antecedent basis is provided in the underlying independent claim, Appellant submits that the rejection is improper and accordingly requests that the rejection be reversed.

B. The § 103(a) rejection of claims 1, 3-9, 11-17, 19-27, and 29 is improper because the asserted teachings of Na and Foladare alone, or in combination, fail to teach or suggest each of the claimed limitations.

Neither of the asserted references teaches or suggests transmitting a transmission suspension message to a server over the radio interface provided by the network infrastructure, as claimed. The Examiner acknowledges at page 4, lines 10-12, that Na does not disclose the claimed transmission of a suspension message. However, the relied-upon portion of Foladare also fails to teach or suggest such limitations. Foladare teaches that a user "accepts" a call by clicking on an icon to notify an Internet Access Provider (IAP). However, Foladare's user terminal 101 is connected to the IAP through a Local Exchange Carrier via a POTS telephone line. There is no teaching or suggestion that a suspension message is transmitted over a radio interface, as claimed.

Consistent with the acknowledgement at page 4, lines 10-12, that Na does not teach transmitting a transmission suspension message, Na also does not teach generating a

transmission suspension message for a server on the basis of a first mode change command, as claimed in each of the independent claims. Instead, Na teaches that when a voice call request is detected, reception of the multimedia broadcast is continued, but the decoding of the audio signal of the received multimedia broadcast is discontinued for the duration of the voice call (Figs. 2, 3, 4, 5, blocks 221, 315, 431, 519). While the receiving device discontinues decoding the audio signal of the received broadcast, the broadcast signal is still received and the video portion is viewed during the voice call (*e.g.*, Col. 1, line 59 – Col. 2, line 10, and Col. 8, lines 54-63). Thus, in direct contrast to the claimed invention, Na continues to receive and process the digital multimedia broadcast despite a voice call being accepted/initiated (asserted as corresponding to the claimed first mode change command generated by the user).

Further, neither of the asserted references teaches or suggests that a device performing data streaming communication with a server generates a transmission suspension message for the server on the basis of a first mode change received via the device's user interface, as claimed in each of the independent claims. While the Examiner asserts that Foladare teaches discontinuing an Internet connection upon acceptance of a telephone call via a terminal connected over a wired telephone line, Foladare does not teach or suggest that the wired terminal was performing data streaming communication. Rather, Foladare teaches that the Internet connection is disconnected (Col. 3, lines 42-45) while the user accepts the telephone call and then, once the line is returned to an on-hook state, the IAP reconnects the Internet connection to the previously disconnected URL address (Col. 4, lines 1-15). If a data streaming communication, as claimed, were disconnected and later reconnected as taught by Foladare, a user would lose or miss the portion of the stream that occurred during the disconnection. Neither Na nor Foladare has been shown to teach or suggest a device that generates a transmission suspension message as claimed.

In summary, Na is directed to operations internal to the mobile terminal and does not suggest sending a message to a server, as claimed. Since Foladare has not been shown to teach or suggest communication with a server external to a network infrastructure providing a radio interface connection and Na fails to teach or suggest communication with a server, as claimed, any combination of the teachings of Na with those of Foladare would

fail to correspond to such limitations. The general assertion that Na teaches data streaming and Foladare teaches suspension of an Internet connection fails to provide evidence of correspondence to several of the claimed limitations as set forth above. Thus, the § 103(a) rejection cannot be maintained. Appellant accordingly requests that the rejection be reversed.

Dependent claims 3-8, 11-16, 19-24, 26, 27, and 29 depend from independent claims 1, 9, 17, and 25, respectively. Each of these dependent claims also stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the above-discussed combination of Na and Foladare. While Appellant does not acquiesce to any particular rejections to these dependent claims, including any assertions concerning descriptive material, obvious design choice and/or what may be otherwise well-known in the art, these rejections are moot in view of the remarks made in connection with the independent claims above. These dependent claims include all of the limitations of their respective base claims and any intervening claims and recite additional features which further distinguish these claims from the cited references. "If an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious." MPEP § 2143.03; *citing In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Therefore, dependent claims 3-8, 11-16, 19-24, 26, 27, and 29 are also patentable over the asserted combination of Na and Foladare.

1. The rejection of claim 26 is improper because the rationale relies upon teachings outside the basis for the rejection.

The rejection of claim 26 at page seven, relies on citations to "Griffin" (specifically, "pars. 27-28, 33"). However, the rejection of claim 26, set forth in the statement at page three, is based upon the teachings of Na and Foladare. Without further identification or clarification, Appellant cannot ascertain the basis for the rejection of claim 26 since the rationale improperly relies upon teachings outside the stated basis for the rejection. Appellant accordingly requests that the rejection be reversed.

C. The § 103(a) rejection of claims 1, 3-9, 11-17, 19-27, and 29 is improper because the requisite rationale to modify Na, as asserted, has not been articulated.

In addition to having to show that the asserted combination of references teaches or suggests all of the claim limitations, the Examiner must also articulate reasoning with some rational underpinning to support the asserted conclusion of obviousness. Appellant respectfully submits that this requirement has not been met.

The requisite evidence of motivation to combine the cited references as asserted has not been presented at least because the asserted modification of Na would improperly undermine the teachings of Na. If a proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984); MPEP § 2143.01(V). As explained above, Na is directed to a device that receives a multimedia broadcast during the existence of a voice call to allow a user to continue to view the broadcast video/text while taking the voice call. Modifying the device of Na to instead disconnect the multimedia broadcast as taught by Foladare (Col. 3, lines 42-45) would directly undermine the objective of allowing Na's user to view the broadcast while taking/making a voice call. Since the asserted modification undermines the objective of Na, such a modification cannot support the § 103(a) rejection.

Because the proposed modification of Na would improperly undermine the teachings of Na, the requisite rationale to support a § 103(a) rejection has not been articulated. Thus, the proposed modification fails to support a *prima facie* § 103(a) rejection, and the rejection should be reversed.

D. Conclusion

In view of the above, Appellant respectfully submits that the invention set forth in claims 1, 3-9, 11-17, 19-27, and 29 is patentable over the asserted references and that the rejections should be reversed. Appellant respectfully requests reversal of the rejections as applied to the appealed claims and allowance of the application with respect to the appealed claims.

Authorization to charge the undersigned's deposit account is provided on the cover page of this brief.

Respectfully submitted,

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VIII. CLAIMS APPENDIX

1. A method, comprising:

performing data streaming communication with a server connected to a network infrastructure providing a radio interface connection, wherein the server is external to the network infrastructure;

receiving a communication connection request message from the network infrastructure;

indicating reception of the communication connection request on a user interface;

receiving a first mode change command via the user interface;

generating a transmission suspension message on the basis of the first mode change command, the transmission suspension message informing the server to suspend transmission of the data stream;

transmitting the transmission suspension message to the server over the radio interface provided by the network infrastructure; and

accepting from the network infrastructure the communication connection on the basis of the first mode change command.

3. The method of claim 1, further including:

generating a communication connection acceptance message on the basis of the first mode change command;

requesting for suspension of the data streaming communication on the basis of the communication connection acceptance message; and

transmitting the communication connection acceptance message to the network infrastructure.

4. The method of claim 1, further including:

accepting the communication connection on the basis of the transmission suspension message.

5. The method of claim 1, further including:

generating a connection suspension message on the basis of the first mode change command, the connection suspension message requesting the network infrastructure to release a radio connection providing the data streaming communication; and

transmitting the connection suspension message to the network infrastructure.

6. The method of claim 1, further including:

receiving a second mode change command via the user interface;

releasing the communication connection on the basis of the second mode change command; and

requesting for continuation of the data streaming communication on the basis of the second mode change command.

7. The method of claim 1, further including:

receiving a communication connection release message from the network infrastructure;

indicating the reception of the communication connection release message on the user interface;

receiving a third mode change command via the user interface;

requesting for continuation of the data streaming communication on the basis of the third mode change command.

8. The method of claim 1, further including:

receiving a communication connection release message from the network infrastructure;

requesting for continuation of the data streaming communication on the basis of the connection release message.

9. A mobile terminal comprising:

a communicating unit for performing data streaming communication between the mobile terminal and a server connected to a network infrastructure providing a radio interface connection between the mobile terminal and the server, wherein the server is external to the network infrastructure;

a message receiving unit for receiving a communication connection request message from the network infrastructure;

an indicating device connected to the message receiving unit, for indicating reception of the communication connection request message to a user of the mobile terminal;

a command receiving device for receiving a first mode change command generated by the user;

a data streaming control unit operationally connected to the command receiving device and the communicating unit, for requesting for suspension of the data streaming communication from the server on the basis of the first mode change command, wherein the data streaming control unit is configured to generate a transmission suspension message on the basis of the first mode change command, the transmission suspension message informing the server to suspend the transmission of the data stream and is configured to transmit the transmission suspension message to the server over the radio interface provided by the network infrastructure; and

a communication connection control unit operationally connected to the command receiving device and the data streaming control unit, for accepting from the network infrastructure the communication connection on the basis of the first mode change command.

11. The mobile terminal of claim 9, wherein the communication connection control unit is configured to generate a communication connection acceptance message on the basis of the first mode change command;

the communication connection control unit is configured to transmit the communication connection acceptance message to the network infrastructure;

and

the data streaming control unit is configured to request for suspension of the data streaming communication on the basis of the communication connection acceptance message.

12. The mobile terminal of claim 9, wherein

the communication connection control unit is configured to accept the communication connection on the basis of the transmission suspension message.

13. The mobile terminal of claim 9, further including:

a data streaming radio connection control unit operationally connected to the command receiving device, for generating a connection suspension message on the basis of the first mode change command, the connection suspension message requesting the network infrastructure to release a radio connection providing the data streaming communication; and

the data streaming radio connection control unit is configured to transmit the connection suspension message to the network infrastructure.

14. The mobile terminal of claim 9, wherein the command receiving device is configured to receive a second mode change command generated by the user;

the communication connection control unit is configured to release the communication connection on the basis of the second mode change command; and

the data streaming control unit is configured to request for continuation of the data streaming communication on the basis of the second mode change command.

15. The mobile terminal of claim 9, wherein the message receiving unit is configured to receive a communication connection release message from the network infrastructure;

the indicating device is configured to indicate the reception of the communication connection release message to the user;

the command receiving device is configured to receive a third mode change command generated by the user;

the data streaming control unit is configured to request for continuation of the data streaming communication on the basis of the third mode change command.

16. The mobile terminal of claim 9, wherein the message receiving unit is configured to receive a communication connection release message from the network infrastructure;

the data streaming control unit is connected to the message receiving unit; and

the data streaming control unit is configured to request for continuation of the data streaming communication on the basis of the communication connection release message.

17. A computer program including computer program code stored on a computer readable medium, the computer program code configured to, with a processor, cause an apparatus at least to:

perform data streaming communication between the apparatus and a server connected to a network infrastructure providing a radio interface connection, wherein the server is external to the network infrastructure;

receive a communication connection request message from the network infrastructure;

indicate reception of the communication connection request on a user interface;

receive a first mode change command via the user interface;

generate a transmission suspension message on the basis of the first mode change command, the transmission suspension message informing the server to suspend transmission of the data stream;

transmit the transmission suspension message to the server over the radio interface provided by the network infrastructure; and

accept from the network infrastructure the communication connection on the basis of the first mode change command.

19. The computer program of claim 17, wherein the apparatus is further caused to:

generate a communication connection acceptance message on the basis of the first mode change command;

request suspension of the data streaming communication on the basis of the communication connection acceptance message; and

transmit the communication connection acceptance message to the network infrastructure.

20. The computer program of claim 17, wherein the apparatus is further caused to:

accept the communication connection on the basis of the transmission suspension message.

21. The computer program of claim 17, wherein the apparatus is further caused to:

generate a connection suspension message on the basis of the first mode change command, the connection suspension message requesting the network infrastructure to release a radio connection providing the data streaming communication; and

transmit the connection suspension message to the network infrastructure.

22. The computer program of claim 17, wherein the apparatus is further caused to:

receive a second mode change command via the user interface;

release the communication connection on the basis of the second mode change command; and

request continuation of the data streaming communication on the basis of the second mode change command.

23. The computer program of claim 17, wherein the apparatus is further caused to:

receive a communication connection release message from the network infrastructure;

indicate reception of the communication connection release message on the user interface;

receive a third mode change command generated via the user interface; and

request continuation of the data streaming communication on the basis of the third mode change command.

24. The computer program of claim 17, wherein the apparatus is further caused to:

receive a communication connection release message from the network infrastructure; and

request continuation of the data streaming communication on the basis of the connection release message.

25. An apparatus comprising at least one radio modem, a user interface, at least one processor and at least one memory including computer program code, the at least one memory and the computer program code configured to, with the at least one processor, the at least one radio modem and the user interface, cause the apparatus at least to:

perform data streaming communication between the apparatus and a server connected to a network infrastructure providing a radio interface connection, wherein the server is external to the network infrastructure;

receive a communication connection request message from the network infrastructure;

indicate reception of the communication connection request message on the user interface;

receive a first mode change command via the user interface;

on the basis of the first mode change command, the transmission suspension message informing the server to suspend transmission of the data stream;

transmit the transmission suspension message to the server over the radio interface provided by the network infrastructure; and

accept from the network infrastructure the communication connection on the basis of the first mode change command.

26. The method of claim 1, further comprising:

performing the data streaming communication by communicating with the server on an application level; and

requesting for the suspension of the data streaming communication from the server on the application level on the basis of the first mode change command.

27. The mobile terminal of claim 9, wherein the communicating unit is configured to perform the data streaming communication by communicating between the mobile terminal and the server on an application level, and the data streaming control unit is configured to request for the suspension of the data streaming communication from the server on the application level on the basis of the first mode change command.

29. The apparatus according to claim 25 further configured, with the at least one processor, the at least one radio modem and the user interface, to cause the apparatus at least to:

generate a connection suspension request message on the basis of the first mode change command, the connection suspension message requesting the network infrastructure to release radio connection providing the data streaming communication; and

transmit the connection suspension message to the network infrastructure.

IX. EVIDENCE APPENDIX

None.

X. RELATED PROCEEDINGS APPENDIX

None.